IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

MACA.No. 1561 of 2005()

OPMV.1924/1999 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THALASSERY

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APPELLANT/PETITIONER:

CIBI THOMAS, S/O. THOMAS,
MACHITHANNIYIL HOUSE, MUNDAYAMPARAMBA POST,
IRITTY, KANNUR.

BY ADV. SRI.T.A.RAMADASAN

RESPONDENTS:

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1. THOMAS NICOLASS, S/O. NOCILASS,
NEERAKKAL HOUSE, KANJIRAPPALLY P.O.,
KANJIRAPPALLY.

* 2. NIKOLASS, S/O. MATHEW,
NEERAKKAL HOUSE, KANJIRAPPALLY P.O.,
KANJIRAPPALLY. (DELETED)

(SECOND RESPONDENT DELETED FROM THE PARTY
ARRAY AT THE RISK OF THE PETITIONER, AS PER
ORDER DATED 13.7.2007 IN I.A.NO.1400/2007)

3. NEW INDIA ASSURANCE COMPANY LTD.,
CHANGANASSERY BRANCH, CHANGANASSERY.

BY ADV. SRI.P.MURALEEDHARAN
SRI.C.RAJENDRAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 09/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

M.A.C.A.No.1561 OF 2005

Dated this the 9th August, 2007.

J U D G M E N T

This appeal is filed by the claimant himself challenging the quantum of compensation awarded to him. The appellant who is a practicing lawyer, was riding a motor cycle, bearing Registration No.KL-5B 606, from Pala to Thalayolaparambu. It is averred that when the motor cycle reached Arunassery, a Maruthi Car bearing Registration No.KL5/E 8483, driven by the second respondent, came in a rash or negligent manner, and hit against the motor cycle, causing injuries to the appellant. Appellant filed the Original petition claiming an amount of Rupees One Lakh as compensation, impleading the owner, driver and the insurer of the car. The owner and driver of the vehicle remained ex parte. The 3rd respondent, Insurer, alone contested the matter. Negligence alleged against the driver was denied. It was contented that the accident occurred due to the negligence of the appellant himself. It was also contented that the accident occurred while the appellant tried to overtake another vehicle. Quantum of compensation claimed was disputed. The Tribunal found that the accident occurred due to the negligence of the second

respondent, driver of the car. The Tribunal found that the appellant is entitled to get a compensation of Rs.25,000/=. The 3rd respondent insurer was directed to pay that amount. Challenging that award, this appeal is filed.

2. The finding of the Tribunal that the accident occurred due to the negligence of the second respondent, and the appellant is entitled to get compensation, have become final and conclusive. So, the only question arises for consideration is whether the quantum of compensation awarded was reasonable or not.

3. In the Original Petition itself, it was averred that at the time of the accident, the appellant was a practicing lawyer at Thalassery Bar, and he was getting a monthly income of Rs.5000/= per month. According to the appellant, he was unable to attend the work for a period of three months. The Tribunal arbitrarily fixed the income as Rs.2000/= per month. Though the petitioner claims 7% disability, he was examined by a Medical Board, which fixed his permanent disability to 2%. The Tribunal awarded loss of earning only for a period of one month. I am of the view that the Tribunal ought to

have fixed the income of the appellant as Rs.5000/= per month, so as to count the loss of earning. If that be so, the appellant is entitled to get a further amount of Rs.3000/= towards loss of earning. Though the appellant claimed an amount of Rs.15,000/= as treatment expenses, the Tribunal awarded only an amount of Rs.6,194/=, because the appellant produced the bills only for that amount. The evidence in this case shows that immediately after the accident, the appellant was taken to Holly Ghost Hospital, Mattichira. He sustained the fracture Phalanx and other injuries. The evidence shows that after discharge from the Holy Ghost Hospital, appellant continued treatment in the Community Health Centre, Vaikom. He was referred to Medical College, Kottayam, for an expert opinion also. The evidence shows that he was admitted in the hospital on 8.2.1999 and and underwent treatment there till 12.2.1999. So, the quantum of compensation awarded for treatment expenses is very low. I am of the view that the Tribunal ought to have awarded a further amount of Rs.5000/= at least on that count. The Tribunal has awarded an amount of Rs.5000/= for pain and sufferings. Considering the nature of the injuries and the period of treatment, the Tribunal ought to have awarded an amount of Rs.8000/= for paind and sufferings. Hence, the

appellant is entitled to get a further amount of Rs.3000/= on that count. The Tribunal took a view that because of the nature of injuries, the appellant will not have any functional disability. But a reasonable amount is to be give as compensation for disability under the head of loss of amenities. If disability of 2% is fixed, taking Rs.5000/= as his monthly income, the loss of amenities will be more than Rs.20,000/=. Considering all the aspects of the matter, I am of the view that Tribunal ought to have awarded atleast an amount of Rs.15,000/= as compensation for loss of amenities. So, the appellant is entitled to additional compensation of Rs.8000/= on that count. I do not find any reason to interfere with the quantum of compensation awarded under other heads. Therefore, I am of the view that the appellant is entitled to get an additional compensation of Rs.19,000/= with 6% interest from the date of petition till its realisation.

In the result, the appeal is allowed in part. An award is passed allowing the appellant to recover an amount of Rs.19000/= as additional compensation from the third respondent, Insurance Company, with 6% interest from the date of petition, till the date of

realisation. The third respondent is directed to deposit the above amount in favour of the appellant. On deposit, the appellant can withdraw the amount.

K.PADMANABHAN NAIR,
JUDGE

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